IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

RSA.No. 1300 of 2004()

AS.139/2000 of II ADDL. DISTRICT COURT, PALAKKAD
OS.371/1998 of PRL.MUNSIFF COURT, PALAKKAD

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APPELLANT : RESPONDENT/PLAINTIFF

K.SURESH KUMAR, S/O.SARASWATHY,
RESIDING AT KINATTINKARA HOUSE,
PUTHUR AMSOM, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA

RESPONDENTS: APPELLANTS/DEFENDANTS

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1. KOMALAM, W/O.KRISHNANKUTTY,
RESIDING AT THACHAMOOCHIKKAL HOUSE,
VILAYACHATHANOOR AMSOM, VILAYANNOOR KALAM,
ALATHUR TALUK, PALAKKAD DISTRICT.

2. SHEEJA, S/O.LATE K.VINOD KUMAR,
C/O.SUKUMARAN, RESIDING AT SANTHOSH VIHAR,
MALAYANKODE, PITTUPEEDIKA, KODUVAYUR,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 1300 OF 2004

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Dated this the 13th day of December, 2007

JUDGMENT

Plaintiff in O.S.371/1998 on the file of Munsiff Court, Palakkad is the appellant. Defendants are respondents. Appellant instituted the suit for realisation of Rs.50,000/- allegedly borrowed by Vinodkumar, husband of second respondent and son of first respondent. According to appellant on 2.1.1998 Vinodkumar who was suffering from cancer, borrowed Rs.50,000/- for the treatment and issued a cheque drawn in the account maintained by him towards the security representing that it can be presented after one month. But he died on 21.2.1998. When the cheque was presented for encashment, it was dishonoured for want of sufficient funds on 7.5.1998. Inspite of demand respondents did not pay the amount and therefore appellant is entitled to the decree. Respondents resisted the suit contending that Vinod

kumar did not borrow any amount and did not issue the dishonoured cheque. It was contended that the entire expenses for his treatment was spent by his father-in-law and for the purpose of his treatment, no amount was borrowed and the dishonoured cheque was created misusing the cheque leaf of Vinodkumar which was kept in his office and it is a forged one and appellant is not entitled to the decree.

2. Learned Munsiff on the evidence of PW1 and Exts.A1 to A3 and DW1 granted a decree accepting the case of appellant. Respondents challenged the judgment before District Court, Palakkad in A.S.139/2000. Learned Additional District Judge on reappreciation of the evidence found that evidence do not establish that the dishonoured cheque was issued by Vinodkumar or that Vinodkumar had borrowed the amount as alleged by appellant. Learned District Judge found that though PW1 was examined, his evidence do not establish that the dishonoured cheque was signed by Vinodkumar in his presence and on the evidence case of PW1 cannot be

believed and set aside the finding of the trial court and dismissed the suit. It is challenged in the second appeal.

3. Learned senior counsel appearing for appellant was heard.

4. The argument of learned senior counsel is that first appellate court should not have reversed the finding of the trial court and that too finding that the signature of Vinodkumar seen in Ext.A1 cheque is not genuine without getting report of an expert. It was argued that if the first appellate court is not satisfied with the evidence on record and doubted the signature found in the cheque courts below should have sent the cheque to an expert for an opinion and without doing so, reversal of the judgment is not sustainable. It was argued by the senior counsel that cheque was dishonoured only for want of sufficient funds and not for difference in the signature and hence the finding of the first appellate court is not sustainable.

5. On hearing the learned senior counsel, I do not find any substantial question of law involved in the appeal.

6. The very stand taken by respondents even in the written statement was that the dishonoured cheque is a fabricated one and created by making use of the cheque leaf from the cheque book kept in the office of deceased Vinodkumar. Therefore when the suit is based on the dishonoured cheque, it is upto the appellant to establish that it was issued by deceased Vinodkumar. When it is specifically contended in the written statement that it is a fabricated cheque appellant should have sent Ext.A1 to an expert for comparison of the signature with the signature of the deceased. Though it was contended before courts below that admitted signature of Vinodkumar was not available, appellant should have called for the records from the Bank where Vinodkumar had an account, which necessarily have the signature of Vinodkumar obtained for opening of the account and forwarded

to an expert for a report on comparison of the said signature with the signature seen in Ext.A1. It is not open to the appellant to argue before this court that first appellate court of its own discretion should have sent the disputed cheque for an opinion of the expert. Apart from the comparison of signature, first appellate court elaborately considered the evidence. Evidence of PW1 quoted by first appellate court in the judgment establish that even PW1 has no case that the cheque was signed by deceased Vinodkumar in his presence. In the light of the evidence on record, finding of first appellate court that appellant failed to establish that the dishonoured cheque was issued by deceased Vinodkumar and he received Rs.50,000/- is perfectly correct. In the light of that factual finding, appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006